

Judge Can Upset Guilty Verdict Under New District Court Rule

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Jurist May Act Even Before Defense Makes Motion for Acquittal, Under Wider Powers

Suppose you are a U. S. District Court Judge, presiding at the criminal trial of John Doe.

The jury brings in a verdict of guilty—yet in your own mind the evidence is not sufficient in law to justify a conviction.

Must you abide by the jury's verdict?

It used to be that you had to. But that's not true any more. New rules for the district court now give the presiding judge the power in criminal trials to set aside the jury's guilty verdict and enter a judgment of acquittal.

And what's more the judge doesn't even have to wait for the defense to make the acquittal motion. He can act if he believes himself to be justified in any case where the evidence falls short.

All of this results from the streamlining job the U. S. Supreme Court gave the district court procedure, the new rules taking effect last March.

Under the new rules the judge still can not set aside the verdict of acquittal and pronounce the defendant guilty—but here's what he can do:

(1) If the jury says a defendant is guilty he can either reverse that verdict, or he can order a new trial with a new jury.

(2) If the jury is deadlocked the judge can order a new trial, or he can decide that further prosecution is not warranted and enter an acquittal verdict.

The first case in the nation to involve use of this second provision was in the court of Judge James P. McGranery, who dismissed two men accused of railroad sabotage Wednesday night after the jury had been unable to reach a decision.

Before the new rules took effect all that Judge McGranery could

have done in the event of a hung jury was order a new trial. But he was within his rights in freeing the men because he thinks the new rules go a long way to clarify the law and the responsibility of the court where the legal evidence falls short in proving the guilt of an accused.

Judge McGranery thinks that the new rules are good in cases such as this, "where the evidence falls short in proving that those involved in the trial were guilty."

But he acknowledges that the revised code imposes great responsibility on the trial judge, such as the railroad sabotage case, where the evidence was lacking in proof as to who placed the tieplates in the switches.

Record 1/17/47 **Loss of Legal Notes Frees Perjury Suspect**

Disappearance of a court reporter's stenotype notes yesterday resulted in a directed verdict of acquittal for Charles L. Andrews, 42, Upper Darby builder charged with perjury over FHA priorities.

The Government's perjury case was based on statements Andrews allegedly made to a Federal Grand Jury last November 15 that he had paid money to Maynard W. Poole, Jr., then chief FHA underwriter here, for building material priorities. Subsequently Andrews denied making such payments.

SECOND DAY OF TRIAL

As the trial went into its second day yesterday, Raymond P. Whearity, special assistant to the Attorney General, told U. S. District Judge J. Cullen Ganey that Nathan C. Shapiro, the court stenographer, had reported the original Grand Jury notes missing. He asked the judge to call Shapiro as a witness.

"I do not call the witnesses," the judge replied. "If you want to call him, you call him."

CREDIBILITY IS ISSUE

"If that is your ruling," said Whearity, "I will abide by it, but I did not want to be put into a position to vouch for the credibility of the witness."

Shapiro then testified that although he had the typewritten transcript of the minutes, he was unable to find the original stenotype notes.

JURY FOREMAN CALLED

Whearity next called to the stand John J. Kennedy, who was foreman of the Grand Jury in November. Kennedy testified that Andrews had "categorically denied" either paying Poole or making statements to that effect. Later, however, Andrews "qualified" his denial by saying that if he had made such a statement it was in jest, the witness said.

Over Whearity's objections, the judge sustained the motion of Geoffrey J. Cuniff, defense counsel, for a directed verdict of acquittal.

'ALMOST UNBELIEVABLE'

Judge Ganey told the jurors that it was "almost unbelievable" that a court reporter should be unable to find the original notes of a Grand Jury proceeding, but added that the defendant was "entitled to have before the court the full and entire original transcription of his testimony."

Poole, to whom the Government said Andrews paid money, was tried a week ago on charges of taking \$14,000 in bribes from a Wilmington, Del., contractor, but the jury disagreed and he is to be tried again later.